



CALIFORNIA EMERGENCY MANAGEMENT AGENCY  
LOCAL ASSISTANCE MONITORING BRANCH  
3650 SCHRIEVER AVENUE  
MATHER, CALIFORNIA 95655  
PHONE: (916) 845-8120 FAX: (916) 845-8380

March 18, 2009

Larry Castro, Extramural Funds Manager  
University of California, Santa Cruz  
1156 High Street (UCSC 387 ISB)  
Santa Cruz, California 95064

SUBJECT: GRANT MONITORING REPORT  
GRANT: PDM #2005-011, OES #000-92271, PJ84, FEMA#65  
VEGETATION MANAGEMENT PROJECT AT LICK OBSERVATORY

Dear Mr. Castro:

The California Emergency Management Agency (CalEMA) (formerly the Governor's Office of Emergency Services (OES)) conducted a compliance field review on January 27 - 28, 2009 for the referenced grant. The purpose of the review was to determine if your organization complied with applicable laws, regulations, guidelines and policies.

CalEMA reviewed the grant for compliance with the administrative and fiscal requirements as outlined in the Office of Management and Budget Circulars (OMB) and the Code of Federal Regulations (CFR). The scope included reviewing fiscal and accounting records, and your Request for Reimbursement dated April 18, 2008 for the period August 24, 2007 through March 31, 2008 and its supporting documentation. Your procurement policy and subaward records were also examined. Except for the few items noted below, monitors were pleased with your documentation and record keeping of expenditures for this grant.

Executive Summary:

Grant Type:	Pre-Disaster Mitigation Grant
Review Type:	Compliance Field Review
Scope:	Fiscal and Administrative Records
Review Period:	August 24, 2007 - March 31, 2008

Findings Summary:

1. The University did not follow its procedure for noncompetitively procured contracts
2. Proper certification and/or verification regarding Suspension and Debarment was not obtained or documented on subaward

*per*

Following are the detailed Findings resulting from the Compliance Field Review. Findings are discoveries that, within the context of a review process, represent operational deficiencies or errors, material program weaknesses or unacceptable program liabilities that could result in questioned grant costs, or collectively characterize a significant risk to program integrity.

## **FINDINGS**

### **Requirement #1:**

44 CFR, Subpart C, Section 13.36 (b)(1), states, *"Grantees and subgrantees will use their own procurement procedures which reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in this section."* Section 13.36 (c) (1) goes on to state, *"All procurement transactions will be conducted in a manner providing full and open competition consistent with the standards of section 13.36."*

44 CFR, Subpart C, Section 13.36 (d) describes the various methods of procurement to be followed. Item (d) (4), states, *"Procurement by noncompetitive proposals is procurement through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate."*

*(i) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids or competitive proposals and one of the following circumstances applies:*

- (A) The item is available only from a single source;*
  - (B) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;*
  - (C) The awarding agency authorizes noncompetitive proposals; or*
  - (D) After solicitation of a number of sources, competition is determined inadequate.*
- (ii) Cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profits, is required.*

The University's procedures for noncompetitively procured contracts are set forth in BULLETIN No. BUS-43, Part 3, Sections III and IV.

**Finding #1:** The University did not follow its procedure for noncompetitively procured contracts.

The University's procedures for noncompetitively procured contracts [BUS-43, Part 3, Sections III and IV] were not followed or documented.



To carry out the work of this grant, a subaward was made by the University to North Tree Fire International. Initially, the University entered into a small purchase consultant contract with North Tree Fire International to assess wildfire hazard and fire suppression capability, and to assist with the planning and design of the Lick Observatory mitigation project. After the grant proposal was approved by FEMA/OES, a grant was awarded in the amount of \$404,412 to the University to carry out the project. The initial planning contract and responsibility for managing the grant was then transferred to the University's Office of Sponsored Projects, who issued a subaward to North Tree Fire International to carry out the work of the project.

Documents supporting the subaward agreement, and specifically the Sole Source Justification statement, indicated that *"North Tree Fire International was set forth as the subcontractor and service provider in the proposal,"* when in fact, the Scope of Work mentioned North Tree Fire International only to the extent that their work related to the initial design of the mitigation project. The appropriate bidding process and/or sole source justification for the contractor to carry out the work of the subaward was not conducted or documented.

#### **Required Corrective Action:**

A corrective action plan (CAP) must be submitted which outlines by when and how the University will ensure that contracts transferring from a small purchase contract to a formal subaward are not exempted from sole source contract requirements in the future.

#### **Requirement #2:**

44 CFR Part C, Section 13.35 states, *"Grantees and subgrantees must not make any award or permit any award (subgrant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, 'Debarment and Suspension.'"*

44 CFR Part 17, Appendix B (6) states, *"The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled 'Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction,' [without modification], in all lower tier covered transactions and in all solicitations for lower tier covered transactions."* The clause reads:

*"Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions"*

*"(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for*

*debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.*

*"(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal."*

**Finding #2: Proper certification and/or verification regarding Suspension and Debarment was not obtained or documented on subaward**

The University's BULLETIN No. BUS-43, Section 4, states, *"The following topics must be covered in certain subagreements under federal awards as a result of recent federal legislation and/or regulations. DEPARTMENT AND SUSPENSION (under all federal grants and cooperative agreements). Subcontractor in executing this agreement is certifying that it is not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this agreement by any federal department or agency, as described in the attached "Certification Regarding Debarment, Suspension, Ineligibility and voluntary Exclusion – Lower Tier Covered Transactions," which is incorporated by reference as Exhibit A."*

Attachment 1 to the University's Subaward Agreement with North Tree Fire International stated *"the following assurance/certifications are made and verified by the official signing for Contractor on the face page of this Subaward"* and listed three regulations, including 44 CFR 17 Certification Regarding Debarment and Suspension. The attachment did not, however, contain all of the above language as required by the University's policy, nor was there a separate *"Certification Regarding Debarment, Suspension, Ineligibility and voluntary Exclusion – Lower Tier Covered Transactions"* statement attached. There also was no evidence that the University had checked the *Excluded Parties List System* ([www.epls.gov](http://www.epls.gov)) to ensure the contractor was not excluded from participation.

**Required Corrective Action:**

A corrective action plan (CAP) must be submitted which describes by when and how the University will take steps to ensure that future subaward agreements funded by federal awards either: 1) incorporate the appropriate Suspension and Debarment clause as outlined 44 CFR Part 17, Appendix B; or 2) include the full self-certification statement as outlined in the University's Bulletin No. BUS-43, Section 4 along with the referenced attachment; or 3), have received verification through the Excluded Parties List System that contractors are not excluded from participation in the federal award.



#### ADVISORY RECOMMENDATION(S)

- Attachment 1 to the University's Subaward Agreement with North Tree Fire International required the Contractor to assure and certify its compliance with "*all applicable laws, regulations, Executive Orders and other generally applicable requirements.*" Page three of the Subaward Agreement under Applicable Code Requirements states, "*Contractor shall perform the Work in accordance with the following Applicable Code Requirements:*  
*1. All laws, statutes, the most recent codes, ordinances, rules, regulations, and lawful orders of all public authorities having jurisdiction over University, Contractor, any Subcontractor, the Project, the Project site, the work or the prosecution of the Work.*"

44 CFR, Subpart C, Section 13.36 (i) Contract Provisions, states, "*A grantee's and subgrantee's contracts must contain provisions in paragraph (i) of this section...*" Although there is general language regarding compliance with all applicable laws, statutes, etc. in the University's subaward agreement, it was noted that the notices pertaining to patent rights, copyrights and rights in data, and compliance with standards and policies contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act were omitted from the subaward contract provisions. It is recommended the University take steps to ensure that all contract provisions as outlined in 44 CFR, Subpart C, Section 13.36 (i) are contained in future contracts/subawards resulting from FEMA grants.

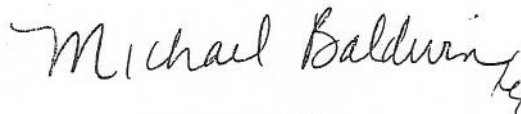
If the subgrantee desires to either challenge or disagree with any of the referenced Findings or Advisory Recommendations included in this report, the subgrantee must respond with their written comments to CalEMA, along with inclusive supporting documentation, to the address shown on the CalEMA letterhead, attention Local Assistance Monitoring Branch.

Since there are significant Findings included in this report, formal corrective action is required to ensure all issues are addressed in a timely manner. The attached document, "Subrecipient Corrective Action Procedures" provides detailed instructions for developing the Corrective Action Plan (CAP). This CAP should be submitted to CalEMA by 30 days from date of letter. You are encouraged to work with your assigned CalEMA Program Manager, Linda Ortiz, to develop your CAP.

Mr. Larry Castro  
March 18, 2009  
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Thank you for the courtesy and cooperation you have provided to assist us in completing this review. If you have any questions about this letter or the enclosures, please contact Don MacMillan at (916) 845-8107, or [don.macmillan@oes.ca.gov](mailto:don.macmillan@oes.ca.gov).

Sincerely,

A handwritten signature in cursive script that reads "Michael Baldwin". The signature is written in dark ink and is positioned above the printed name.

MICHAEL BALDWIN  
BRANCH CHIEF

Enclosure

Attachment

cc: Maureen McLean, Assistant Director, Administration  
University of California, Santa Cruz  
Peggy Okabayashi, CalEMA Administration  
Linda Ortiz, CalEMA Hazard Mitigation  
Subrecipient File



## Subrecipient Corrective Action Procedures

All grants administered by the California Emergency Management Agency (CalEMA) are subject to the many requirements found in federal and state laws, federal regulations (e.g., *Code of Federal Regulations*), federal requirements (e.g., *Office of Management and Budget Circulars*) and state policy guidance. Recipients of these grant funds (referred to as Subrecipients) are also subject to periodic reviews in the forms of audits and monitoring to assure compliance with all applicable requirements. Such reviews often result in the identification of "Findings of Non-Compliance."

"Findings of Non-Compliance" may originate from several different types of reviews, including audits (Office of Management and Budget Circular A-133 or grant-specific), desk compliance reviews and field compliance reviews. Findings are defined as discoveries that, within the context of any review process, represent operational deficiencies or errors, material program weaknesses or unacceptable program liabilities that would probably result in questioned grant costs or, collectively characterize a significant risk to program integrity.

This document provides instructions to Subrecipients (S/R) regarding CalEMA's requirements for corrective action(s) relative to review "Findings." Whenever a Finding is issued against a grant, the Subrecipient is required to formally respond and demonstrate either the S/R's completed or proposed corrective actions. In simple terms, corrective action identifies the "who did what to address the issue?" referenced in the Finding, and "when was it done, or when will it be completed?"

By answering such questions, the S/R develops a Corrective Action Plan (CAP) that provides detailed information for the activities either completed or planned to address the issue(s) referenced in the Finding. In order to expedite this response process, CalEMA has developed a sample plan format with detailed instructions.

For Non-Compliance Findings that have not been resolved, laws and regulations permit the CalEMA and the S/R to enter into a formal compliance agreement that is represented by the S/R's CAP. An approved CAP allows the CalEMA to suspend enforcement actions for up to 180 calendar days, pending resolution of outstanding Findings. The CalEMA is obligated to resume enforcement actions if a S/R does not resolve the Non-Compliance Findings before the end of the CAP.

In order to determine if the S/R's Corrective Action Plan is sufficient, the CAP must:

- Identify the original Finding(s) of Non-Compliance, including specific identifiers listed in the report (e.g., Finding #1) and the terms of non-compliance.
- Identify the S/R staff responsible for corrective action, including title and complete contact information.
- Describe the specific corrective action taken (or to be taken) for each Finding.
- Show the planned completion date for each major activity.
- Include documentary evidence to verify compliance of Findings that have been resolved.
- Include the signature of an authorized agent of the S/R.

When the CAP is received, CalEMA staff will determine whether the Plan reasonably and sufficiently addresses the Non-Compliance Findings. The CalEMA will notify the S/R if the CAP is approved, or, if further information or documentation is required.

For each Finding where the S/R has proposed planned activities, the CAP must be re-submitted before the ending date (180 days), indicating that planned activities have been completed with a certification that the S/R became compliant, along with the applicable date(s) and documentary evidence to verify compliance.

Please submit the original CAP to:

Don MacMillan, Associate Management Auditor  
California Emergency Management Agency  
Local Assistance Monitoring Branch  
3650 Schriever Avenue  
Mather, CA 95655

Please also submit a copy of the CAP to your assigned Program Specialist. The S/R is encouraged to consult with their assigned Specialist to develop their CAP.

For electronic submittals, this information may also be e-mailed to [don.macmillan@oes.ca.gov](mailto:don.macmillan@oes.ca.gov).



## Subrecipient Corrective Action Plan

Submit an original and one copy of a "Subrecipient Corrective Action Plan" to the California Emergency Management Agency (CalEMA) by no later than 30 days following the monitoring report date based on the Compliance Field Review Report issued by the CalEMA Local Assistance Monitoring Branch, for the following grant(s):

Subrecipient:	University of California Santa Cruz
Grant # PDM #2005-011	Review Period: August 24, 2007 – March 31, 2008
OES # 000-92271	Vegetation management Project at Lick Observatory

For each review Finding, please provide the following information:

<b>Finding:</b> <i>(please include any identifiers included in the report, along with citations as appropriate)</i>	
<b>Contact Name &amp; Title:</b> <i>(this is the person(s) responsible for completing resolved or planned corrective action)</i>	<b>Contact Information:</b> <i>(please provide phone number and e-mail address for each contact)</i>
<b>Corrective Action(s):</b> <i>(include specific objectives and activities completed or planned to address the Finding, with actual or estimated dates)</i>	
<b>Objective or Activity:</b>	<b>Date:</b>

**Required Signature:** The S/R authorized agent certifies that all corrective action(s) have been, or will be, implemented as specified:

Signature of Authorized Agent                      Date                      Telephone

\_\_\_\_\_  
 Name and Title of Authorized Agent

UNIVERSITY OF CALIFORNIA, SANTA CRUZ

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OFFICE OF SPONSORED PROJECTS  
TEL: (831) 459-2778  
FAX: (831) 459-4989

SANTA CRUZ, CALIFORNIA 95064

April 13, 2009

Don MacMillan, Associate Management Auditor  
California Emergency Management Agency  
Local Assistance Monitoring Branch  
3650 Schriever Avenue  
Mather, CA 95655

Re: Corrective Action Plan for Grant: PDM #2005-011, OES #000-92271, PJ84,  
FEMA#65, "Vegetation Management Project at Lick Observatory"

Dear Mr. MacMillan:

Please find enclosed our subrecipient Corrective Action Plans (CAP), based on the findings of your compliance field review, carried out on January 27-28, 2009, and communicated to us in your Grant Monitoring Report, dated March 18, 2009.

We will resubmit to you the CAPs, on or before the ending date (180 days), estimated to be October 15, 2009, indicating that planned activities have been completed with a certification that we became compliant, along with the applicable dates(s) and documentary evidence to verify compliance.

Regarding the Advisory Recommendation, in future contracts/subawards resulting from FEMA grants, we will include references to the State Energy Conservation Plan and the US Energy Policy and Conservation Act as required.

If you have any questions about these plans, please contact me ([wfclark@ucsc.edu](mailto:wfclark@ucsc.edu); 831-459-5278).

Sincerely yours,

A handwritten signature in cursive script, reading "William F. Clark".

William F. Clark, Director

Enclosures

Cc: Larry Castro, Extramural Fund Manager, UCSC



**Subrecipient Corrective Action Plan**  
**University of California, Santa Cruz**

Subrecipient:	University of California, Santa Cruz
Grant #PDM #2005-011	Review Period: 8/24/07 — 3/31/08
OES # 000-92271	Vegetation Management Project at Lick Observatory

**Finding #1:** The University did not follow its procedure for noncompetively procured contracts. The University's procedures for noncompetively procured contracts [BUS-43, Part 3, Sections III and IV] were not followed or documented. Also, the University should ensure that contracts transferring from a small purchase order to a formal subaward are not exempted from sole source contract requirement.

**Contact Name & Title:**

William F. Clark  
Director  
Office of Sponsored Projects, UCSC

**Contact Information:**

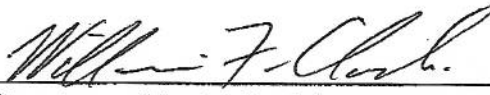
831-459-5278  
wfclark@ucsc.edu

**Corrective Action(s):**

**Objective or Activity:** The University shall modify its "Request to Issue Subaward" form to include a "yes/no" check-off box asking if a purchase order was previously issued to proposed subawardee for similar goods and services related to the present prime agreement. Instructions will be given that, if "yes" and a sole source award is sought, justification must be provided that meets one or more of the criteria listed under BUS-43, Part 3, Section III, D. 1 (presently restated on page 2 of the "Request to Issue Subaward" form) to make explicit that a previously issued purchase order is not sufficient grounds to award a sole source subaward.

**Date:** May 18, 2009 to modify "Request to Issue Subaward" form and instructions.

**Required Signature:** the S/R authorized agent certifies that all corrective action(s) have been, or will be, implemented as specified:

  
Signature of Authorized Agent

4/13/09  
Date

831-459-5278  
Telephone

William F. Clark, Director, Office of Sponsored Projects, UCSC  
Name and Title of Authorized Agent

**Subrecipient Corrective Action Plan**  
**University of California, Santa Cruz**

Subrecipient:	University of California, Santa Cruz
Grant #PDM #2005-011	Review Period: 8/24/07 — 3/31/08
OES # 000-92271	Vegetation Management Project at Lick Observatory

**Finding #2:** Proper certification and or verification regarding Suspension and Debarment was not obtained or documented on subaward as required in University's Bulletin No. BUS-43, Section 4.

<b>Contact Name &amp; Title:</b> William F. Clark Director Office of Sponsored Projects, UCSC	<b>Contact Information:</b> 831-459-5278 wfclark@ucsc.edu
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**Corrective Action(s):**

**Objective or Activity:** The University shall modify its "Attachment 1," part of its standard subaward agreement template, that lists out all required certifications, to include the full language regarding Debarment and Suspension (i.e., "Subcontractor in executing this agreement is certifying that it is not currently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this agreement by any federal debarment or agency, as described in the attached "Certification Regarding Debarment, Suspension, Ineligibility and voluntary Exclusion — Lower Tier Covered Transactions," which is incorporated by reference as Exhibit A." ). We shall also include said Exhibit A as a separate page to be signed by the subawardee and become part of the agreement.

In addition, on our "Request to Issue Subaward" form, we will include a "yes/no" box asking if the proposed subawardee is on the Excluded Parties List System. The Office of Sponsored Projects subaward specialist will be responsible for making this determination by checking the EPLS Web page ([www.epls.gov](http://www.epls.gov)).

**Date:** June 18, 2009 to modify "Attachment I" of the standard subaward template to include full language regarding Debarment and Suspension; incorporate the Debarment Certification as a separate page to be signed by the subawardee; and, include a "yes/no" box on the "Request to Issue Subaward" form verifying that the proposed subawardee is not excluded from participation in the federal award through use of the Federal EPLS Web page.

**Required Signature:** the S/R authorized agent certifies that all corrective action(s) have been, or will be, implemented as specified:

 4/13/09 831-459-5278  
 Signature of Authorized Agent                      Date                      Telephone

William F. Clark, Director, Office of Sponsored Projects, UCSC  
 Name and Title of Authorized Agent